United Nations CERD/C/SR.2626

International Convention on the Elimination of All Forms of Racial Discrimination

Distr.: General
8 May 2018

Original: English

Committee on the Elimination of Racial Discrimination
Ninety-fifth session

Summary record of the 2626th meeting*
Held at the Palais Wilson, Geneva, on Monday, 30 April 2018, at 3 p.m.

Chair: Mr. Amir

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Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

Combined seventeenth to twenty-third periodic reports of Nepal

* No summary records were issued for the 2624th or 2625th meetings.

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The meeting was called to order at 3 p.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

Combined seventeenth to twenty-third periodic reports of Nepal (CERD/C/NPL/17-23; CERD/C/NPL/Q/17-23)

1. *At the invitation of the Chair, the delegation of Nepal took places at the Committee table.*

2. **Mr. Dhital** (Nepal), introducing his country's combined seventeenth to twenty-third periodic reports (CERD/C/NPL/17-23), said that Nepal was an ethnically, culturally and linguistically diverse nation. Its current Constitution, promulgated in 2015, guaranteed all Nepalese people equality before the law and sought to eliminate all forms of discrimination. It also contained provisions intended to protect and promote the rights of marginalized and minority groups in accordance with all the international human rights instruments ratified by the country. Public and private acts of discrimination were punishable by law, and victims were entitled to compensation. Constitutional provisions on proportional participation and affirmative action had led to increased representation of women and disadvantaged groups in decision-making positions. The National Assembly, for example, comprised 37 per cent women, 15 per cent indigenous people, 7 per cent Madheshis, 12 per cent Dalits and 12 per cent persons with disabilities and other minority groups. In the period 2016–2017, the 4,026 persons recruited into public service positions had included 1,383 women, 1,026 indigenous persons, 901 Madheshis, 385 Dalits, 189 persons with disabilities and 142 persons from backward areas. Dalit women held 6,567 positions at the ward level.

3. A series of laws, which would enter fully into force in August 2018, had been introduced to reinforce the legal system in matters concerning discrimination. In particular, the Caste-Based Discrimination and Untouchability (Offence and Punishment) Act of 2011 protected the rights of Dalits and provided for a penalty of up to 3 years' imprisonment and a fine of 25,000 Nepalese rupees for acts of discrimination on any basis, with increased severity when committed by public officials. Exploitative labour practices, including the *haruwa/charuwa* system, had been abolished under the Bonded Labour (Prohibition) Act of 2002, and a number of laws had been enacted to protect the social, economic and civil rights of disadvantaged groups. Affirmative action measures had been introduced to combat intersectional discrimination affecting women belonging to indigenous communities and disadvantaged castes and ethnic groups. The new Constitution had laid the legal foundation for tackling unequal access to education, health care and economic resources.

4. The National Human Rights Action Plan for the period 2014–2019 called for the revision of laws in line with international human rights standards and sought to address intersectional marginalization and promote access, inclusion and equity. The first national economic census, which was currently under way, would provide clear, updated information on the enjoyment of economic, social and cultural rights. A national housing policy had been introduced, and a programme put in place to supply the most vulnerable groups, including victims of the 2015 earthquake, with free housing. A total of 12,199 earthquake-resistant homes had been constructed during fiscal year 2015/16 and a further 3,942 had been built in 2016/17.

5. Former *kamlari* workers had been reintegrated into society. A total of 12,000 had been granted access to education and vocational training since the launch of a national action plan against child bonded labour in 2009. Awareness of the negative consequences of bonded labour practices was high. The Government had awarded scholarships to 7,553 former *kamlaris* from the disadvantaged districts of Dang, Banke, Kailali and Kanchanpur in 2015/16. In addition, 15,409 children from communities freed from bonded labour had received scholarships in the same period. The Badi Upliftment and Development Board had implemented programmes to improve living conditions and to end the sex trade in the Badi community. A law had been passed in 2015 to protect persons accused of witchcraft from inhumane and degrading treatment and to provide them with support and compensation.

6. The country's constitutional framework and government policies ensured that benefits from natural resources were shared among all groups of people. Local governments received 25 per cent of the revenue from natural resources and had sole responsibility for land tax. Community programmes shared the benefits of land and forestry resources with local indigenous peoples. Nepal had ratified the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169).

7. As part of an inclusive education policy adopted in 2017, almost 530,000 children aged under 5 from Dalit and other deprived communities received education allowances and school lunches and supplies. Another government scholarship programme sought to ensure that girls from marginalized and disadvantaged groups had access to education. Among Dalits and indigenous communities, education for girls was increasingly seen as a tool for generating income and improving living conditions, which had resulted in high primary school enrolment rates among girls, particularly in the Chepang community. Girls in rural areas who did not attend school received education and training on life skills as part of the Government's development programme. A multisectoral nutrition plan for the period 2013–2017 had helped to improve the health of women and girls from low-income groups. The Government had established social awareness programmes to change negative attitudes towards inter-caste marriages. However, progress in that regard would take time.

8. Although Nepal was not a party to the Convention relating to the Status of Refugees, its laws did not discriminate against asylum seekers, refugees or other non-citizens; indeed, it had received recognition from the international community for its hosting of refugees. The Government respected the principle of non-refoulement and supported refugees as far as its limited resources allowed. Prospective Nepalese migrant workers were provided with training, and weekly radio and television programmes were broadcast to raise awareness of safe employment opportunities abroad. The Government had introduced a "free visa, free ticket" scheme, which compelled foreign companies to cover the cost of visas and travel tickets for Nepalese citizens going to work in the six member States of the Cooperation Council for the Arab States of the Gulf and Malaysia. Nepalese embassies in destination countries provided shelter and free legal aid to stranded Nepalese workers. The Foreign Employment Welfare Fund offered financial assistance to migrant workers and their families in the event of injury or death of the worker. Children of deceased migrant workers were entitled to scholarships.

9. In 2016 and 2017, 659 cases relating to caste-based discrimination had been brought before the Supreme Court, 39 of which had resulted in a conviction. The Court had delivered two landmark judgments in 2005 and 2010 in which it had ordered the Government to enact laws to eliminate all forms of discrimination and to introduce programmes and initiatives to empower marginalized people and uphold their right to social justice. The Government had fully complied with those orders.

10. Fast-track court proceedings were applied in human trafficking and sexual abuse cases, and in 2015 and 2016, 53 per cent of the 1,068 cases filed under the Human Trafficking and Transportation (Control) Act of 2007 had ended in a conviction. Of 352 victims of trafficking in 2017, 5 per cent had been Brahmans, 20 per cent had been Chhetris, 59 per cent had been from indigenous communities, 12 had been Dalits and 4 per cent had been Madheshis. Special protection mechanisms had been implemented under the National Plan of Action against Human Trafficking, and an anti-trafficking cell had been set up within the Nepal Police.

11. The National Human Rights Commission of Nepal was an independent constitutional body that had received A status accreditation. Its complaints procedure had been simplified, and it could now hear complaints based on reports from the media and other sources. The number of complaints filed had risen and government bodies were increasingly being held accountable. The budget allocated to the Commission in the 2016/17 fiscal year had amounted to 203,085,412 Nepalese rupees. The Commission had conducted 350 monitoring operations and 220 investigations of rights violations during the fiscal year and had issued 201 decisions and recommendations relating to human rights issues, including caste-based discrimination. As part of its monitoring function, it monitored the rights of persons freed from bonded labour. Various other commissions, such as the National Foundation for Development of Indigenous Nationalities, the National

Women Commission and the National Dalit Commission, had been or would be established to address human rights issues affecting specific groups. The Government had carried out human rights training and education programmes with a view to fostering intercultural understanding. Studies had shown a heightened awareness of human rights among the police and security forces who had received such training, which had improved investigation practices and victim and witness protection.

12. **Mr. Cali Tzay** (Country Rapporteur), noting that the State party's periodic report was 10 years overdue, said that, while he appreciated the presence of the Permanent Representative of Nepal as head of the delegation, he would have preferred to engage with a delegation from the capital that included representatives of the three branches of government. It was regrettable, too, that the State party's common core document had not been updated since 14 June 1994. He urged the Government to submit an up-to-date version as soon as possible.

13. He would appreciate an indication of whether the State party intended to ratify the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families and the International Convention for the Protection of All Persons from Enforced Disappearance.

14. According to reports, the economic and social conditions of Dalits, indigenous peoples, Madheshis, Muslims and people living in Karnali Pradesh had not improved since the end of the Nepalese Civil War in 2006. There was growing recognition that, unless steps were taken to address the deep-seated causes of the war, which included endemic inequality, caste-based discrimination and the practice of untouchability, the country's future stability could be at risk. According to information sent to the Committee, ongoing de facto segregation prevented members of disadvantaged castes, including Dalits, from marrying outside their caste in total safety and security and from accessing places of worship, public spaces and basic services. With that in mind, he would welcome statistics, disaggregated by caste, on the enjoyment of the rights to health and housing.

15. It would be interesting to hear about any cases in which the provisions of the Convention had been explicitly invoked or applied by national courts. He would like to know whether it was true that, for a complaint to be valid under the Caste-Based Discrimination and Untouchability (Offence and Punishment) Act of 2011, it had to be submitted within three months of the alleged violation. He would also like to hear the delegation's comments on the fact that the Act did not prohibit discrimination on the basis of colour or national or ethnic origin. It would be helpful if the delegation would indicate the number of complaints submitted pursuant to the Act and describe the outcome of any judicial investigations carried out as a result. It might also comment on claims that law enforcement officials did not act *suo motu* in response to complaints of caste-based discrimination and did not systematically file first information reports.

16. The Committee had received reports to the effect that the procedures for the appointment of members of the National Human Rights Commission were not sufficiently participatory or transparent, and that, to date, less than a quarter of the Commission's recommendations had been implemented. According to paragraph 48 of the State party's periodic report, only five complaints of caste-based discrimination had been lodged with the Commission in 2012 and 2013. He wished to know why the number was so low and what follow-up had been given to the complaints in question. It should be noted that a lack of complaints did not necessarily point to an absence of discrimination. Rather, it could be symptomatic of public distrust or fear of the authorities.

17. The State party mentioned in its periodic report that the National Inclusion Commission, the Madheshi Commission and the Tharu Commission were not yet operational and that the National Dalit Commission was operational only in Kathmandu, owing to a shortage of resources. What measures would be taken to rectify that situation?

18. He would like details of the number of acts of incitement to racial hatred that had been prosecuted, the number of convictions handed down and the redress granted to victims. He would also like to know whether racial hatred was considered an aggravating circumstance in criminal prosecutions and whether police officers, prosecutors and judges were given training in handling racially motivated incidents. He wished to point out that the

State party's interpretative declaration regarding article 6 of the Convention raised concerns about whether acts of racial discrimination were being prosecuted and whether the rights to effective protection and adequate reparation enshrined in that article were being effectively protected. He wondered whether the State party would consider withdrawing its interpretative declaration on article 4 of the Convention, which appeared to be incompatible with the obligation to adopt domestic legislation prohibiting the dissemination of ideas based on ideas of racial superiority or racial hatred.

19. He invited the delegation to comment on reports that indigenous peoples had been unable to participate meaningfully in the drafting of the 2015 Constitution, in part because, despite recommendations to the contrary by the Committee and the Special Rapporteur on the rights of indigenous peoples, indigenous parliamentarians had been elected from among candidates chosen by political parties, which limited their ability to work across party lines to champion indigenous rights. He would also be grateful for an explanation of why the Government had not published the 2010 report of a high-level working group that had recommended, inter alia, the amendment of the National Foundation for Development of Indigenous Nationalities Act of 2002 to expand the number of officially recognized indigenous communities in Nepal from 59 to 81. It would be useful to know whether there were any national laws guaranteeing the right of indigenous peoples to possess, develop, control and use their communal lands. According to reports, those rights continued to be violated in the context of hydroelectric and other projects, which sometimes also led to the involuntary displacement of indigenous populations.

20. The State party had not responded to a joint letter, dated 7 June 2017, from the thematic special procedures mandate holders in which concerns had been raised about alleged extrajudicial killings and the use of excessive force by Nepalese security officials between 2013 and 2017, including during protests over the 2015 Constitution that had claimed the lives of at least 40 members of ethnic minorities. He would appreciate a comment from the delegation in that regard. The high-level commission established by the Government on 25 August 2015 to investigate reports of killings, violence and vandalism during protests that had taken place in the Terai region had presented its final report to the Government on 15 December 2017. He would welcome the delegation's comments on why the report had not yet been made public, why there had been no justice for the victims and why no action had been taken against the perpetrators.

21. He was concerned about information indicating that Dalits, indigenous peoples and Madheshis were underrepresented in upper secondary education and among teaching staff, that literacy rates among Terai Madheshis and Hill Dalits were lower than the national average and that Dalits faced discrimination at school from teachers and fellow students. What was being done to improve the situation?

22. Although national laws prohibited slave labour, practices such as *kamaiya* and *haruwa charuwa* allegedly continued to exist, owing in part to a lack of affordable housing and alternative means of living. The delegation's comments on the matter would be appreciated. He invited the delegation also to respond to reports that over 200,000 people in Nepal were enslaved and that indigenous peoples were disproportionately affected, as they accounted for almost half of all victims. He would also be grateful for a response from the delegation to reports that efforts to resettle and rehabilitate former slave labourers were undermined by a lack of funding and did not provide long-term solutions; that access to land was disproportionately problematic for Dalits and indigenous peoples, leaving them particularly vulnerable to economic exploitation at the hands of landowners; that provisions related to land rights and land reform in the 1964 Lands Act and later laws were not being implemented; and that the majority of agricultural land was in the possession of a wealthy few, to the detriment of millions of members of disadvantaged castes.

23. The Committee welcomed the fact that the Constitution of 2015 recognized the right to citizenship of children of Nepalese citizens by birth. However, according to information submitted to the Committee, such children were being denied citizenship certificates by chief district officers on the basis of the 2006 Citizenship Act. The citizens in question were mostly Madheshis living in the southern regions of Nepal who came from deprived and vulnerable sectors of society, and the refusal to issue their children with proof of citizenship was a clear example of structural discrimination on the grounds of class and ethnicity. More

than two years had elapsed since the adoption of the 2015 Constitution, but the Government had not enacted a new citizenship law, and it did not appear inclined to do so, despite the fact that a great many children of Nepalese citizens by birth were stateless. In addition, the Committee had received reports of discrimination against, and harassment of, Dalits by government officials in an attempt to dissuade them from pursuing citizenship applications. He wished to know what measures were being or would be taken to resolve the situation.

24. He wondered whether the Government planned to amend the Human Trafficking and Transportation (Control) Act of 2007 to criminalize all forms of human trafficking, including trafficking for the purposes of sexual or labour exploitation. He wished to know whether there were any standard operating procedures to identify trafficking victims, why the number of prosecutions for trafficking had fallen sharply in 2016 and whether it was true that shelters for trafficking victims were not open to men.

25. Most Dalit girls reportedly married before their fifteenth birthday, and Dalit women and girls suffered from higher maternal mortality rates than the rest of the population, partly owing to a lack of access to qualified midwives. He would be interested in hearing what specific steps were being taken to eradicate child marriage and promote and protect the sexual and reproductive health of members of disadvantaged castes, including Dalits.

26. Noting that the State party had offered temporary shelter, for humanitarian reasons, to thousands of refugees from Bhutan and Tibet, he asked whether an official asylum procedure would be put in place to ensure respect for the principle of non-refoulement. He would appreciate a detailed response from the delegation to allegations that Tibetan refugees, including persons born in Nepal who had lived in the country for decades, were not being issued with identity documents, which left them exposed to fines, detention and deportation and prevented them from receiving an education, opening bank accounts, obtaining a driving licence or travelling. Lastly, it would be useful to know whether there were any specialized training programmes for law enforcement officers, judges, lawyers and public officials on the prevention of racial discrimination and on the rights enshrined in the Convention.

27. **Mr. Kut** said that, in accordance with article 9 (1) of the Convention and rule 65 of its amended rules of procedure, the Committee would request the State party to provide, within one year, information on its follow-up to the recommendations contained in certain paragraphs of the Committee's concluding observations on the periodic report under consideration.

28. **Mr. Avtonomov** said that he would appreciate information on the application of the Caste-Based Discrimination and Untouchability (Offence and Punishment) Act of 2011, particularly with regard to the number, nature and outcomes of any complaints lodged under section 5 of the Act, the role of the National Dalit Commission in that connection and the steps taken to raise awareness of its provisions among affected communities. He wished to know what progress had been made in amending the schedule of Adivasis/Janajatis contained in the National Foundation for Development of Indigenous Nationalities Act of 2002 and what measures had been adopted by the Ministry of Federal Affairs and Local Development in coordination with Adivasi/Janajati district committees and village development committees to ensure the effective implementation of legislation protecting the rights of Adivasis/Janajatis. In addition, it would be helpful if the delegation could provide information on the impact of the measures taken to promote the inclusive development of indigenous peoples within the framework of the current National Human Rights Action Plan.

29. He would appreciate information on the activities of the Intangible Cultural Heritage Preservation Council and the involvement of indigenous peoples in its work. Information on the participation of Adivasis/Janajatis in legislative bodies at the federal and provincial levels would also be welcome. He wondered what efforts had been made to develop procedures for consulting indigenous peoples on legislative and administrative measures that directly concerned them and whether organizations of indigenous peoples were able to participate in the design of such procedures. It would be useful to receive information on the implementation of the Mediation Act of 2011 and the involvement of Adivasi/Janajati

communities in that process. On a related point, it was unclear whether indigenous customary law and practices were recognized in the new version of the Criminal Code.

30. He wished to know what progress had been made in identifying lands traditionally occupied by Adivasis/Janajatis and how such communities benefited from agricultural development programmes. With regard to education, he invited the delegation to provide information on the impact of the measures taken to guarantee education for Adivasi/Janajati children and the availability of education in their native languages.

31. **Ms. Ko**, noting that the stress and fear associated with natural disasters could have the effect of exacerbating prejudice and hatred, said that it would be interesting to know what steps had been taken to discourage prejudicial attitudes towards vulnerable groups in the aftermath of the earthquake of April 2015. In addition, she wondered whether there were any geographical variations in the enforcement of laws aimed at eliminating discrimination. It was unclear, for example, whether Kathmandu was the focus of special attention in the enforcement of such laws and whether additional measures had been taken to ensure their effective enforcement in areas in which discrimination represented a particular problem for historical reasons.

32. **Ms. Izsák-Ndiaye** said that she would be grateful if the delegation could provide an update on the implementation of the Kathmandu Valley road improvement project and respond to reports that the project continued to be implemented without the free, prior and informed consent of affected communities and had resulted in forced evictions, displacements and the destruction of cultural property. Information received by the Committee indicated that the impact of the various efforts made to improve the situation of Dalits had been limited. It would be helpful if the delegation could comment on those reports and indicate how the effectiveness of such efforts could be strengthened in the future. She wondered whether the Government planned to introduce measures aimed at tackling discrimination and changing mindsets at the community level and, in particular, whether it planned to establish informal community education and provide open and safe spaces for dialogue between communities.

33. **Ms. Shepherd** said that she wished to commend the State party for its decision to form a cross-sectoral committee to prepare the report under consideration. She would appreciate an update on the status of the National Inclusion Commission, which, according to paragraph 26 of the State party report, had been "established" but not yet "constituted". It would be helpful if the delegation could comment on the measures that could be taken to address the structural discrimination that Dalits continued to experience in the State party. It was unclear what criteria were used to determine whether a person was "financially poor" and therefore eligible for free higher education under article 31 of the Constitution. She wondered what measures could be taken to strengthen the State party's efforts to reduce the proportion of Dalits living below the poverty line. In that connection, she wished to point out that it was important to focus on both poverty prevention and poverty eradication. With regard to education, she would urge the State party to update its national curricula and textbooks with a view to ensuring that they promoted Dalit human rights, condemned caste-based discrimination and untouchability and did not contain derogatory, humiliating or caste-based language. Dalits and other ethnic groups should be encouraged to participate in the process of writing their own history. Lastly, she would appreciate clarification regarding the State party's use of the word "backward" to refer to particular regions, groups or communities in its territory.

34. **Ms. McDougall** said that she wished to know how the Government planned to ensure that persons who were most in need and communities that had been affected by discrimination and neglect were targeted in its disaster relief activities and how it monitored the activities of international non-governmental organizations in that context in order to ensure that such persons and communities were prioritized. The Committee had been informed that members of indigenous communities, including children, had been arrested for participating in protests. She would appreciate information on the situation of the individuals who had been detained, including information on the charges brought against them, the length of time they had spent in detention and the likelihood of an early trial. It would be useful to learn whether education was free of charge and what measures were being taken to promote educational opportunities and improve educational outcomes for

Dalit girls. Lastly, she would like to know whether it was true that the State party had only one Dalit minister and two Dalit judges. The low representation of Dalits in the judiciary no doubt undermined their confidence in its independence and in their ability to gain access to justice.

35. **Ms. Chung** said that she would appreciate more information on the training that police officers received on the prevention of discrimination against Dalits and indigenous peoples. It would be interesting to know what protection and remedies were available for victims under the Caste-Based Discrimination and Untouchability (Offence and Punishment) Act, 2011. In addition, she would be grateful if the delegation could comment on reports that the Government had ended its policy of paying 100,000 rupees to couples who entered into inter-caste marriages and that such couples continued to face violence. She would welcome more detailed statistics on the current situation of Dalits and indigenous peoples in the State party, including the poverty rates, incarceration rates and primary and secondary school enrolment and dropout rates among those communities. In addition, she wished to know whether the national Government and local governments conducted regular surveys and other research on discrimination based on work and descent and whether they reviewed the effectiveness of existing measures and proposals for the elimination of such discrimination, as was recommended in the draft principles and guidelines for the effective elimination of discrimination based on work and descent.

36. **Mr. Murillo Martínez** said that, in spite of the adoption of a Constitution that was inclusive and rich in fundamental rights, inequalities persisted between different ethnic groups in Nepal. Bold action was needed to address the situation of Dalits and indigenous peoples, in particular. Since 1994, significant progress had been made to close the gender gap in relation to poverty and literacy. However, there was still work to be done in those areas and others, such as landownership. He would like to know what percentage of privately owned land was registered to women and how the State party was addressing the issue of inequality of landownership among men and women. He wondered whether statistics were available on the number of convictions for acts of racism and racial discrimination. In that regard, the Committee would appreciate further information on what considerations had been taken into account when defining the sentences and fines applicable to those found guilty. Further information on the law on witchcraft would also be welcome, including details on what had prompted its adoption. For example, how widespread were incidents involving allegations of witchcraft? How was the law applied in practice?

37. **Ms. Dah** said that she was struck by the length of time it had taken for the State party to draft its new Constitution. She wondered whether the Constituent Assembly had been obliged to resolve certain issues prior to drafting the Constitution. She would also like to know whether the State party had begun drafting a new common core document. If not, she would encourage it to initiate that process as soon as possible. She also encouraged it to withdraw its interpretative declarations in respect of articles 4 and 6 of the Convention.

38. She would like to know whether any population groups had been particularly affected by the destruction caused by the earthquake in 2015. If so, the Committee would appreciate information on what action had been taken to assist those groups and whether people had been relocated. She commended the action taken by the State party to promote women's empowerment and women's rights. In that connection, she would appreciate further information on the positions held by women in the judiciary and the army. For example, were there any senior officers who were women? She would also welcome information on how many Dalit women and women from other minority groups were in the police force. In addition, she would like to know what proportion of the State party's diplomats were women and how many women diplomats were from minority groups.

39. In relation to ensuring that information on the rights of all peoples was disseminated and that those rights were understood, she would welcome more information on how history was taught in public schools. In particular, she would appreciate details regarding how different population groups were presented and how the teaching of history was used to tackle the prejudices and stereotypes that persisted in Nepalese society.

The meeting was suspended at 5.15 p.m. and resumed at 5.35 p.m.

40. **Mr. Dhital** (Nepal) said that his country faced a number of challenges related to the diversity and complexity of its society. It had taken a significant step forward with the adoption of an inclusive rights-based Constitution that reflected the aspirations of the entire spectrum of Nepalese society. Following recent elections, a strong Government was in place and was in a position to make the most of the new constitutional framework in order to bring stability and systematically address the needs of the various population groups. Political stability, growth and development were imperative in order to generate the resources required to build on the action already taken to tackle inequalities. Indeed, without development, it would be impossible to address human rights properly. Legislation was already in place to enable various national institutions to combat inequality and discrimination, and work was under way to define the staffing and management structure that those institutions required.

41. Currently, 26 per cent of women in Nepal owned land. The number of women landowners was increasing thanks to incentives provided by the Government in relation to the land registration process. It was worth noting, however, that the amount of land owned by Nepalese citizens was relatively small, as the country's mountainous geography meant that there was only a small proportion of arable land. In terms of employment, women occupied 11 per cent of senior public service positions and made up 18 per cent of the overall public service workforce. Those levels of participation were also increasing as a result of the quota system. Women already occupied 47 per cent of health sector jobs. In recent years, women had held the positions of President, Chief Justice of the Supreme Court and Speaker of Parliament. In order to increase the number of women in senior positions, emphasis must be placed on improving education, especially among minority communities such as the Dalits.

42. Measures were being taken to enhance human rights education in Nepal. Information about human rights was being disseminated by the audiovisual media and the written press, and human rights education was an integral part of the training provided to employees in the security and law enforcement sectors. In the future, human rights education would also be a part of the school curriculum.

43. Bonded labour, including the *kamlari* and *haruwa charuwa* systems, had been abolished in 2000. Such practices were unlawful and anyone engaging in them was subject to punishment. The Government was providing shelter and education for victims of forced labour practices. Victims were being encouraged to tell their stories in order to raise awareness and persuade society not to repeat mistakes of the past.

44. He had been puzzled by the Committee's comments about racial hatred and hate speech. Nepal did not have a culture of hate, racism or animosity. Having experienced 10 years of conflict, the Nepalese people understood that violence had no place in society. The people had taken ownership of the peace process, which had culminated in the adoption of the new Constitution.

45. The delegation thanked the Committee for its concerns related to the earthquake of 2015. It had affected 14 districts and had a devastating impact on the country's infrastructure. The National Reconstruction Authority was working to rebuild damaged infrastructure, public facilities and private housing and, with the help of generous contributions from the country's neighbours and international partners, it was hoped that the reconstruction work could be completed within the coming three years.

The meeting rose at 6 p.m.

United Nations CERD/C/SR.2627

International Convention on the Elimination of All Forms of Racial Discrimination

Distr.: General
9 May 2018

Original: English

Committee on the Elimination of Racial Discrimination
Ninety-second session

Summary record of the 2627th meeting
Held at the Palais Wilson, Geneva, on Tuesday, 1 May 2018, at 10 a.m.

Chair: Ms. McDougall (Vice-Chair)
later: Mr. Amir (Chair)

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Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

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In the absence of the Mr. Amir (Chair), Ms. McDougall (Vice Chair) took the Chair.

The meeting was called to order at 10 a.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

Combined seventeenth to twenty-third periodic reports of Nepal (CERD/C/NPL/17-23 and CERD/C/NPL/Q/17-23) (*continued*)

1. *At the invitation of the Chair, the delegation of Nepal took places at the Committee table.*

2. **Mr. Dhital** (Nepal) responding to questions raised by the Committee in the previous meeting, said that he regretted that a lengthy period had elapsed since his country had last submitted a periodic report or an updated core document. He would ask the Committee to consider, however, that Nepal had experienced a violent conflict between 1996 and 2006, which had been followed by a protracted transition. That period, characterized by rapid and turbulent change and a lack of clear political direction, had prevented the Government from fulfilling all its reporting obligations. However, the political context had now stabilized and a successful transformation had taken place, culminating in the adoption of a democratic Constitution that provided an excellent framework for the protection and promotion of human rights. The Government was now in a better position to fulfil its commitments and intended to submit a new core document at the earliest opportunity.

3. Nepal had many unique characteristics and was geographically and ethnically diverse. Districts with a low human development index and poor infrastructure and socioeconomic development indicators were classified as "backward", which was the term used in the Constitution. Most such districts were in the mountainous far west of the country. To address the problem of underdevelopment, the Government had designed a support programme to mobilize national and international resources. It had also identified the most vulnerable communities and provided assistance for Dalit and indigenous families and people living in remote areas. Dalit children benefited from monthly cash grants and free education programmes and school lunches, which in food-poor areas served as an incentive for them to attend school.

4. In response to the concern expressed by the Country Rapporteur regarding the composition of the delegation and the absence of experts from the capital, he wished to point out that the recently elected Government was preoccupied with many domestic concerns and with activities that were key to the successful implementation of the new Constitution. In particular, the new governance structures established at the local, provincial and national levels needed to be developed and strengthened, which meant that the Ministry of Federal Affairs and General Administration — the entity responsible for coordinating the implementation of the Convention — was the busiest ministry. For that reason, he had been asked to represent Nepal in the dialogue with the Committee.

5. Regarding the interpretative declarations in respect of articles 4 and 6 of the Convention, at the time that Nepal had ratified the Convention, it had been a monarchy with a unitary system of government that had restricted certain rights; the declarations had been appropriate in that context. However, the new Constitution and current laws were more in keeping with the spirit of articles 4 and 6. He undertook to consult with officials in the capital with a view to determining whether the declarations might be withdrawn. Concerning the possibility that Nepal might ratify further human rights conventions, the Government preferred to focus on strengthening its implementation of the 24 human rights instruments — including 7 core international human rights treaties — to which the country was already a party. While it was willing to consider ratifying additional instruments in the future, for the present time the Government's priorities were capacity-building, the domestication of international conventions and the effective fulfilment of its reporting requirements.

6. All Nepalese people, irrespective of class, creed, ethnicity or religion, had been consulted on the new Constitution, and the final text reflected their aspirations. The period leading up to the adoption of the Constitution had been lengthy precisely because the

consultation process had been so extensive. The Nepalese Constitution was the most democratic and human rights-oriented such document in the world. The formation of a stable Government had now paved the way for its effective implementation.

7. Concerning the representation of Dalits and indigenous peoples in the public service and the judiciary, he recalled that, in the past, women had been severely underrepresented in the civil service as a whole, except in the health sector. Affirmative action had been taken to address that situation and positive outcomes were being achieved. For example, women's presence in the diplomatic service had steadily increased so that now almost a third of diplomatic staff were women, and women from minorities were serving in high-level positions. Civil service recruitment was carried out in accordance with the reservation system, whereby 45 per cent of vacancies were set aside for various groups, including women, Adivasis/Janajatis, Madeshis, Dalits, persons with disabilities and persons from backward areas. A specific percentage of posts was allocated to each of those groups, with the result that diversity among public officials was increasing year by year.

8. Nepal had outlawed the caste system in 1963, thus banning the practice of untouchability, and efforts to tackle the problem had since gained additional momentum. The Criminal (Code) Act, the Criminal Procedure (Code) Act and the Sentencing Act, all passed in 2017, clearly defined all elements of discrimination, including untouchability, and specified penalties in proportion to the severity of the crime. As a result, perpetrators were punished and victims had access to remedies, including compensation. More importantly, social awareness of caste-based discrimination had increased, creating an environment in which Dalits could realize their rights. However, there were still disparities between the cities, where inhabitants enjoyed a strong sense of equality and community, and rural areas where education levels were likely to be lower and where illegal practices might persist. The Government was attempting to solve the problem by reaching out through local mechanisms and structures in order to promote attitudinal changes. Local governments had been empowered to act and to take decisions independently, with a view to bringing government closer to the people who best understood the situation and the needs and issues affecting their locality. While there continued to be major resistance to inter-caste marriage in rural areas, society was changing quickly. He knew of higher-caste women who had married Dalits, for example, and suffered no loss of status, something that would have been unthinkable 10 or 20 years earlier. Although it took time to change people's mindsets, especially in areas where the level of education and awareness was low, significant progress had been achieved, and the Government remained sincere and serious in its efforts to bring about such change.

9. The Caste-based Discrimination and Untouchability (Offence and Punishment) Act of 2011 had been enacted in order to address the unfair situation affecting Dalits, who made up a significant proportion of the population. Committees had been established at the national and local levels to coordinate the law's implementation. Under the Act, anybody who practised untouchability or who engaged in degrading or discriminatory treatment of another individual for reasons related to caste, whether in public or in private, was subject to punishment. The number of reports of such treatment had been rising, and such complaints were taken seriously by Government officials. It was not true that law enforcement officers failed to investigate them. However, there was a need for greater awareness about the possibility of making a complaint. The local government restructuring made it more likely that cases would be reported because victims would no longer have to make long and costly journeys in order to lodge a complaint.

10. In accordance with the Constitution, no citizen could be denied a citizenship card. The procedures for obtaining such cards were set out in the relevant laws. The Constitution also contained provisions enabling the acquisition of citizenship by children of Nepalese women who were married to foreigners. The Births, Deaths and Other Personal Events (Registration) Act of 1976 and Rules of 1977 had introduced compulsory birth registration, which had improved government record-keeping, thereby facilitating the acquisition of citizenship. Birth registration was carried out by local governments. There was an incentive of 1,000 rupees for Dalit families who registered a birth within 35 days. If any Nepalese citizens lacked a citizenship card, it was most likely because they had not applied for one. The cards were readily granted whenever someone applied. The National Identity Card

Management Center, under the Ministry of Home Affairs, was preparing an online database of all citizens in order to facilitate identification and provide services based on individual needs. To date, almost half of the population had been registered in the identity database.

11. An inclusive education policy was being implemented and an "education for all" campaign was being launched with a view to ensuring that all children attended school and continued their education. The school drop-out rate among indigenous and Dalit children was a concern, and incentives had been put in place to encourage them to continue their education. The Government provided scholarships to indigenous and Dalit students, and there was a quota system to ensure that members of disadvantaged groups could pursue studies in technical fields such as engineering.

12. The Government had previously provided 100,000 rupees to couples who entered into inter-caste marriages with a view to encouraging such marriages. However, that incentive had been looked upon unfavourably by society and consequently had been abolished. Uncontroversial incentives that did not rely on an individual's choice of spouse and that benefitted society as a whole were considered to be more appropriate.

13. The Madheshi Commission and the Tharu Commission had been established by law and were soon to be launched. The Dalit Commission was being strengthened and would start to operate more at the district level. The requirements of those commissions were being taken into account in the ongoing government restructuring process, and every effort was being made to ensure that they had the necessary resources.

14. Human rights education was now an integral part of law enforcement training, and officials were made fully aware of their duties and responsibilities in that regard. Over 350 training events and workshops had taken place in 2018, with the participation of 84 human rights experts. Outreach and awareness-raising programmes had been established, information materials and press releases had been issued and a culture of human rights was being fostered in the country. The media were playing a central role in exposing human rights violations, and law enforcement officials were responding quickly to such cases.

15. The Government was providing refugees with as much support as possible, given the socioeconomic conditions in the country. Refugees were provided with identity cards for international travel and, where appropriate, assisted with third-country resettlement. The basic social, economic and cultural rights of refugees in Nepal were respected.

16. The planning for the Kathmandu Valley road expansion project had begun many years earlier. An expansion was necessary because the city had grown considerably, both in terms of geographical area and population. All those whose homes or property had been demolished to make way for the expansion had been compensated on an equal footing. A multilevel prior consultation process had taken place. Furthermore, the Government had complied with all orders of the Supreme Court related to the project. The road expansion had not negatively affected any one group in particular; indeed, it was in the interests of all groups living in Kathmandu.

17. Child marriage had been outlawed in the country and was less common than it had previously been. Nevertheless, it still occurred in some remote rural communities. The legal minimum age for marriage was 20 for both men and women. The Government was taking steps to raise awareness of the law and of the socioeconomic benefits of delaying marriage.

18. Regarding the matter of indigenous people allegedly having been jailed for participating in protests, Nepalese law guaranteed the right of all to express their views and assert their rights in a peaceful manner. In order to maintain harmony between ethnic groups, the Government did try to discourage groups from engaging in acts that might be considered to be highly provocative, but it in no way condoned arbitrary detention.

19. **The Chair** said that she would like to congratulate the State party on its new Constitution and on the deep reforms that had been undertaken. While welcoming the information provided on the steps taken to increase the representation of women in decision-making positions and implement a gender-responsive budget, she would like to know how many indigenous, Dalit or other ethnic minority women had benefitted from those initiatives. Regarding the system of quotas in place in the country, she wondered what percentage of positions were being filled by ethnic minorities. For example, were reserved

positions in higher education institutions and the Government actually being filled by Dalits or indigenous persons? If not, what action was the Government taking to rectify the situation? It was important to remember that devolving responsibility for the elimination of harmful traditional practices to local governments did not absolve the national Government of all responsibility. She would be interested to hear further details on the Kathmandu Valley road expansion project and the consultation process that had taken place with the communities whose lives had been disrupted by the project. The Committee would like information regarding incarcerated indigenous leaders — specifically, why they were in jail, what charges they faced and whether trials had taken place. If trials had not taken place, they should be freed immediately.

20. **Mr. Calí Tzay** (Country Rapporteur) said that, having visited Nepal four years previously and met with a range of indigenous, Madheshi and Dalit organizations as well as government authorities, he had the impression that there was a gulf between the reality on the ground as reported by civil society and the situation as perceived by the Government. All but 5 per cent of the 683 proposed hydroelectric projects in the Kathmandu region were located on indigenous lands and would result in the displacement of millions of persons and have a negative impact on hundreds of sacred cultural and religious sites, which was a major cause for concern. Similarly, the Kathmandu Valley road expansion project would forcibly displace more than 150,000 people, 95 per cent of them belonging to the Newar indigenous people. Many had already reportedly been displaced without any compensation. He was also concerned about reports that the Nepal Army, as the contractor for the construction of the expressway in Khokana, was deploying troops to occupy sacred indigenous sites and private lands, sometimes by force.

21. The Committee had been informed that some indigenous traditions and rituals were criminalized in Nepal. For example, as the consumption of beef was prohibited under Nepalese law, indigenous persons whose cultures did not consider the cow a sacred animal had been imprisoned for eating beef, and the Supreme Court had issued an order to blacklist any lawyer who brought cases related to the slaughter of cows. Such acts were contrary to article 4 of Constitution, which provided that Nepal was a secular State. The Committee was also concerned at reports of gender-based discrimination against and particularly high rates of uterine prolapse among Dalit women and of malnutrition among women belonging to various minorities.

22. The delegation had asserted that caste-based discrimination was no longer practised, and yet it had also reported that three committees had been established to deal with such discrimination, which seemed a contradiction. He would be interested in learning more about the role of those commissions. He would also like to hear more about the commission established pursuant to article 295 (3) of the Constitution to determine the number and boundaries of the village bodies, municipalities and special, protected or autonomous regions. The delegation might comment on reports that, although there were penalties for racial discrimination, judges sometimes put pressure on plaintiffs to withdraw their complaints because they were against a member of a higher caste, and that inter-caste marriages continued to carry social stigma. He would be interested to hear about any plans to change the school curriculum to eliminate content that was pejorative and discriminatory against Dalits and indigenous peoples. Lastly, he recommended that the State party should take advantage of the training and capacity-building provided by the Office of the United Nations High Commissioner for Human Rights to support its efforts with regard to the ratification of further human rights instruments.

23. **Mr. Dhital** (Nepal), referring to the question about the school curriculum, said that, although Nepali was a lingua franca, instruction in other languages was permitted, provided they had a written form. The major infrastructure projects being undertaken in the State party were intended to benefit the population as a whole. Particular ethnic groups were not concentrated in any given area but rather were scattered throughout the country; hence, the projects would not have an impact on any single group. The groups affected by the Kathmandu road expansion project, for example, were not predominantly indigenous peoples. The Government attached great importance to the cultural heritage of all the peoples of the Kathmandu Valley, and the country as a whole, and would take the necessary steps to preserve it. It was true that some houses had had to be demolished to make way for

road expansion activities, but those affected had been properly consulted beforehand and had received compensation. The Army personnel in charge of the project in Khokana had not used force; rather, they were engaged in a process of dialogue and consultation with the affected community. Women who suffered uterine prolapse received free support and care from medical teams deployed to areas where the condition was most common.

24. Mutual respect, understanding and tolerance were part of the culture of Nepal, and members of all ethnic groups were free to practise their own religions and traditions. There were, however, a number of sensitive issues in Nepalese culture, the slaughter of cows being one of them. While individuals were entitled to follow their own customs, the public slaughter of cows or consumption of beef was likely to offend the sensibilities of those who revered the cow as a sacred animal. In order to maintain harmonious relations, it was important to be respectful of prevailing culture practices.

25. Caste-based discrimination was prohibited by law and under the Constitution, and anybody who practised it was subject to punishment. Nonetheless, certain traditional practices and beliefs persisted, although they were not condoned. The three committees were tasked with raising awareness of the negative effects of certain practices and expediting the process of attitude change in all sectors of society. Several institutions, such as the National Human Rights Commission and the National Inclusion Common, monitored the human rights situation in the country and performed a watchdog function, bringing violations to light and recommending intervention when needed. Although their capacity was increasing, it would take time to fully build the capacity necessary to handle all the complex, intersectional issues at stake.

The meeting was suspended at 11.50 a.m. and resumed at 12.05 p.m.

26. **Mr. Murillo Martínez** said that he would welcome an update on the distribution of the population across rural and urban areas. In 1994, when the country's common core document had been submitted, 80 per cent of the population had lived in rural areas, and he wondered if that situation had changed. Expressing concern at the light penalties for offences related to caste-based discrimination, he asked whether the State party had considered reversing the burden of proof for such crimes. He would also like to know whether racism or racial discrimination was an aggravating circumstance for other criminal offences.

27. **Mr. Avtonomov**, stressing the need for structural change to overcome the problems associated with the caste system, said that he would welcome further information, including statistics, on efforts being made to bring about such change. He would also be grateful for details of action being taken in relation to such issues as preservation of the ancestral lands of indigenous peoples and the provision of education in languages that did not have a written form. In addition, he would be interested to hear about any activities undertaken or planned as part of the International Decade for People of African Descent. He also wished to know whether the State party had considered ratifying the amendment to article 8 of the Convention.

28. **The Chair** said she wished to know whether the State party had considered making a declaration under article 14 of the Convention to recognize the competence of the Committee to receive individual communications.

29. **Mr. Diaby** said that he would welcome information concerning the State party's plans to support the land tenure rights of peasant farmers and communities who were at risk of having their land seized without proper compensation. He noted that, notwithstanding the existence of threats against the Dalit community and violations of their rights, the National Dalit Commission seemed to engage solely in oversight and to be bereft of the authority required to take effective action. He wondered whether the State party had considered expanding the Commission's mandate to enable it to offer effective protection to the community. Given the continued existence of threats against people who supported inter-caste marriage, he would also be interested in learning whether the State party envisaged imposing harsher sentences on persons responsible for caste-based discrimination.

30. **Ms. Chung** said that she had visited Nepal several times in 2007 in her capacity as Special Rapporteur on discrimination based on work and descent. Many members of the Dalit community, especially women, had complained of being subjected to multiple forms of discrimination. With that in mind, she would like to know whether the Dalit minority was properly represented among policymakers in the State party. Time was obviously needed to combat discrimination and, in particular, to change mindsets. Nevertheless, even while endeavouring to bring about such change, it was important to take measures to address discriminatory practices. She would appreciate more detailed information on the action undertaken by the State party in that regard.

31. *Mr. Amir took the Chair.*

32. **Mr. Dhital** (Nepal) said that 80 per cent of the population of Nepal still lived in rural areas and 20 per cent in urban areas. Urbanization was proceeding slowly in many areas, but the rural population remained sizeable. Some locations were quite remote and isolated, but they had recently been linked to the rest of the country through modern means of communication and transport networks.

33. The principle that all persons were equal before the law was enshrined in the Constitution. The penalties imposed for discriminatory practices did not depend on a person's status but on the nature and severity of the crime. Perpetrators of discrimination-related offences were held accountable. There might occasionally be instances when the requisite action was not taken against offenders, but they were exceptional and steps were being taken to minimize their occurrence.

34. With regard to the ancestral land of the Adivasis/Janajatis, he noted that Nepal was a party to the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169). It held consultations and dialogues with communities and households that might be affected by major projects undertaken in any part of Nepal. A mechanism was in place to enable local communities to benefit from the proceeds of such projects. The preservation and development of land tenure rights was a serious issue, particularly because land availability averaged only 0.7 hectares per household. The Government was well aware that, if a family was dispossessed of such a small piece of land, it would face serious difficulties that needed to be addressed.

35. With regard to inter-caste marriage, individuals were free to marry whom they wished, and the State stood ready to provide them with protection and support whenever necessary. In traditional areas there might still be problems, but major changes were taking place in social attitudes and values. Rising levels of awareness and of economic and social development were contributing to those changes. The Government was implementing a targeted anti-discrimination programme focusing on the Dalit community, especially Dalit women and girls, for whom it was promoting education. The older generation had lacked educational opportunities, but schools were now located in all neighbourhoods and families were encouraged to enrol their children in educational institutions and to prevent them from dropping out.

36. The Constitution contained clear provisions regarding proportional representation. Women and representatives of the Adivasi/Janajati and Dalit communities had won seats in the 2017 elections and were represented at the local, provincial and national level. A system of affirmative action and quotas had been introduced to promote the employment of persons belonging to vulnerable groups, and progress was being made in enabling women and others to find decent employment.

37. The Government assumed responsibility for handling cases relating to caste-based discrimination and untouchability. Vulnerable groups were encouraged to raise their voices so that their problems could be addressed in a timely and more effective manner. As lack of resources posed constraints among such groups, the Government was focusing on poverty reduction and elimination. Nepal had not yet considered recognizing the Committee's competence under article 14 of the Convention.

38. **Mr. Cali Tzay** said that the Committee had taken note of the progress achieved by the State party and of its determination to forge ahead and bring about the necessary changes. Legal norms were an important means of regulating citizens' conduct, although

they should not seek to impose specific views or beliefs, but should respect citizens' diverse views. Persistent areas of concern for the Committee included the disproportionate application of laws on treason and sedition to indigenous peoples, the situation of indigenous detainees in some regions, persistent discrimination against Dalits, unequal access to education and health services and unequal participation in political affairs.

39. **Mr. Dhital** (Nepal), expressing appreciation of the Committee's constructive engagement with the delegation, said that the insightful views and expertise of Committee members would be of great value to his Government as it continued to strive to promote and protect the rights of all vulnerable and disadvantaged groups. The delegation had sought to shed light, in a spirit of partnership and cooperation, on the challenges ahead and plans to tackle them effectively. It would clearly take some time to guarantee all the rights enshrined in the Convention and the new Constitution. The cross-cutting nature of existing issues demanded a more holistic approach. Primary responsibility lay with the State, but civil society and international development partners could play an important role in assisting Nepal in fulfilling its pledge under the 2030 Agenda for Sustainable Development to leave no one behind.

The meeting rose at 1 p.m.